

GALLATIN COUNTY  
TRANSFER OF DEVELOPMENT RIGHTS (TDR)  
COMMITTEE

# TDR PROGRAMS

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TRANSFER OF DEVELOPMENT RIGHTS (TDR)  
FEASIBILITY COMMITTEE REPORT

NOVEMBER 2004



# TRANSFER OF DEVELOPMENT RIGHTS (TDR) PROGRAMS

## PROPOSED MODELS AND PROGRAMS

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### INTRODUCTION

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IN LATE FALL 2003, Gallatin County Commissioners, County Planning, and County Open Lands departments formed a committee to investigate transfer of development rights (TDR) programs and the feasibility of using TDRs in the County. Officials appointed committee members representative of a variety of land interests: land owners, ranchers, developers, realtors, conservationists, and city representatives.

#### THE TDR COMMITTEE

The diversity of the TDR Feasibility Committee (the “Committee”) membership was intentional. The Commission purposefully appointed members who would reflect the overall variety of residents and interests within Gallatin County. Membership merged into three prime stakeholder groups: the agricultural community, the development community, and the conservation community.

Some Committee members came to the TDR Committee with first-hand knowledge of TDR programs and experience implementing and using them. Bill Wright, a rancher in Springhill, helped establish the Springhill Zoning Regulation, a zoning district which includes a TDR program. Bill Muhlenfeld, a developer, purchased development rights in the deer winter range of the Middle Cottonwood Zoning District for use in the Saddle Peak Ranch development. Joe Skinner, a rancher and former Gallatin County Planning Board member (and Gallatin County Commissioner elect), has been actively involved in the Dry Creek Rural Land Use Demonstration Project, which utilizes TDRs as one tool helping direct development to appropriate areas.

And Gallatin County retained the expertise of a renowned planner and expert on TDR programs, Rick Pruetz, who met with the Committee and planners and helped draft a TDR policy for the County.

#### MISSION STATEMENT

The mission statement of the TDR Committee is *“to assist the County in determining and helping research effective land use policy through potential implementation of a transfer of development rights (TDR) program(s).”* To that end, the Committee explored the viability of TDR programs for their effectiveness in land preservation, affordability to developers, availability in the marketplace, attraction to landowners, applicability to existing regulatory policies (like zoning districts), and simplicity of use. Moreover, most board members participated because of a wish to find voluntary, market-based solutions for land conservation. One board member expressed a more personal sentiment: “I joined the Committee because I want to find a way to leave this a better place than I came to.”

## **PUBLIC SUPPORT OF LAND CONSERVATION**

Gallatin County residents have traditionally been very supportive of land preservation measures. In 2000, voters passed the Gallatin County Open Space Bond in the amount of ten million dollars for the purpose of purchasing land and conservation easements from willing landowners as a mechanism to manage growth, preserve ranches and farms, protect wildlife habitat and water quality of streams and rivers, and to provide parks and recreation areas. The November 2004 ballot included another ten million dollar open space bond initiative, which passed by nearly 63 percent. The Open Space Program is recognized as just one mechanism for protecting open space; Gallatin County has supported several approaches over the years to preserve valuable and precious open space, watercourses, wildlife habitat, and prime agricultural lands. TDR programs offer another option.

On April 15, 2003, the Commission adopted the Gallatin County Growth Policy, which identifies County goals and policies for development and for preservation. Additionally, the growth policy advocates for the use of certain preservation implementation strategies, such as TDR programs. Through landowner effort, citizen support, and County policy, Gallatin County can promote sensitive and appropriate land use for development, preservation, and accessibility by its citizens.

## **WHAT IS TDR?**

**TRANSFER OF DEVELOPMENT RIGHT OR TDR IS A MARKET-BASED TECHNIQUE THAT ENCOURAGES THE VOLUNTARY TRANSFER OF GROWTH FROM PLACES WHERE A COMMUNITY WOULD LIKE TO SEE LESS DEVELOPMENT (“SENDING AREAS”) TO PLACES WHERE A COMMUNITY WOULD LIKE TO SEE MORE DEVELOPMENT (“RECEIVING AREAS”).** The SENDING AREAS can be environmentally sensitive properties, open space, agricultural land, wildlife habitat, historic landmarks or any other places that are important to a community. The RECEIVING AREAS should be places that the general public has agreed are appropriate for development because they are close to established urban centres, such as Bozeman, Belgrade, Manhattan, or Three Forks; or close to rural community centres, such as identified in the Dry Creek Demonstration Projects; or close to jobs, shopping, schools, transportation, and other urban services.<sup>1</sup>

Transfer of Development Rights programs offer methods by which landowners can sell development rights from one piece of property to use on another, thereby directing development from those areas identified for preservation to areas appropriate for increased density.

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<sup>1</sup> Pruetz, Rick, *Saved by Development* (Arje Press, California, 1997).

## **PROFESSIONAL HELP**

The County hired TDR consultant Rick Pruetz, author of "Beyond Takings and Givings" (Arje Press, 2003), who has studied TDR usage countrywide, providing perhaps the most comprehensive analysis of program initiation, successes, and failures. Pruetz has spent the past 22 years investigating TDR programs in over 100 communities, from West Hollywood, CA to Windsor, CT, and many places, including Gallatin County, in between.

In February 2004, Pruetz spent two days in Bozeman, meeting with County staff, Bozeman city staff, the TDR Feasibility Committee, and with the public in a well-attended meeting held in conjunction with the Gallatin County Planning Board. Pruetz helped answer questions and further explain details of established programs and methods of preserving open space in sites such as Livermore, CA, which has initiated a landfill-tipping fee used to purchase land.

Pruetz explained that while TDRs can provide a practical technique for preserving farmland, such as that found in Montgomery County, MD, not all TDR programs are successful. He cited a number of problems that can stifle success, including mismatched supply and demand. And, just as it is important to update zoning regulations to fit contemporary times, a community cannot assume that TDRs will be used just because everyone thinks it might be a good idea. TDRs can inadvertently discourage increased density if costs or processes are perceived as being overly unwieldy. And in some cases, such as in the Springhill Zoning District, some programs simply aren't used because of an abundant supply of development rights.

"It is important that TDR projects are well received by a community," said Pruetz, adding that increased density obtained through TDRs should be balanced with a real-life community benefit, such as preservation of important agricultural land or riparian corridors. Pruetz praised developer Bill Muhlenfeld's Saddle Peak Ranch project for preserving mule deer winter range, for clustering density in an area more suitable for development, and for accomplishing the desired goals of the Middle Cottonwood Zoning District.

Pruetz produced a report (June 14, 2004) for Gallatin County that explores the following scenarios for using TDRs in Gallatin County:

- Intra-district transfers within the Gallatin County/Bozeman Area Zoning District (the "Donut").
- Potential effect of receiving areas in the City of Bozeman.
- Intra-district transfers within the contemplated Dry Creek Demonstration Project.
- Inter-district transfers from the Dry Creek Demonstration Project into the Gallatin County/Bozeman Area Zoning District.

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## INTENT AND POTENTIAL OF A TDR PROGRAM

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TDR is not a new idea to Gallatin County. Of the County's 16 zoning districts, four currently offer a TDR program. The TDR Committee took the concept a step further, investigating the idea of transferring development rights from zoning district to zoning district. Some Committee members believed a countywide TDR program would be most effective, and *intra*-district transfers could help realize larger County goals.

The potential for the success of a TDR policy in Gallatin County is promising. The County's appeal to residents of a historically rural and scenically beautiful area with a small-town lifestyle lends itself to a preservation technique that protects the quality of life of the County—in town, out in the country, and for the surrounding natural environment. One of the first questions of the TDR Committee was: *With 16 zoning districts, and six to seven potential new districts, are we directing growth to desired areas, and are we achieving preservation and conservation in the County?* Committee members' answers were mixed. There was general agreement that TDR programs could help achieve goals and policies of the Growth Policy.

TDR programs have been implemented and used successfully around the nation, and New Jersey recently passed a statewide TDR program. Tens of thousands of acres of valuable lands and habitat have been preserved through TDR programs in Maryland, New Jersey, Colorado, and Washington.

Selling and buying TDRs is voluntary. Think of TDR as a menu option in a restaurant: you can choose an entrée and nothing else, or you can choose five entrées. The same is true of the things you can do with your land, and the rights that run with your land. You can farm your land, develop the land (per regulations), put your land into a conservation easement, sell the mineral rights (if you own them), sell development rights, or leave the land alone. TDR is an option, not a requirement.

Sending sites are those lands to be preserved, from which to sell development rights to be used elsewhere. For landowners with rivers and streams running through their properties, or those with riparian areas or wetlands or floodplains, or with prime wildlife habitat or agricultural lands, selling development rights from such lands could be in both the community's and landowner's interest. It is income from parcels that otherwise wouldn't or couldn't offer any income from development. A TDR program could allot saleable development rights to parcels like wetlands and habitat precisely *because* they're precious lands. Lands that are too far removed from public water and sewer systems, roads, utilities, etc. are also prime sending areas for TDR. Directing density to populated, serviced areas is a main objective of TDR programs.

The TDR Committee identified four types of lands that TDR could be used to preserve:

- Rivers, streams, and other watercourses
- Riparian areas and wetlands
- Prime agricultural lands
- Wildlife habitat

By classifying lands with these characteristics, TDRs can be assigned (and possibly added up on a cumulative basis) for each feature the land possesses. Density bonuses, or additional density above and beyond that assigned, could be given to a landowner for transferring density rights *out* of an area of high natural resource value. As with the qualifying criteria of most any preservation program, a TDR program includes requirements that lands must meet to participate. Additionally, benefits might be given to lands which would contribute to a greater area of preserved or protected lands. For instance, parcels adjacent to national forests or those adjacent to floodplains might score higher in TDR value than stand-alone parcels with qualifying characteristics.

Receiving areas might also meet qualifications to satisfy needs for proximity to services (roads, sewer and water systems, power and natural gas lines, schools and business centres, or rural centre nodes – villages, etc.), adjacency to municipalities, perhaps, and sites on which none of the *sending* site qualifications exist.

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## WORKING EXAMPLES OF TDR PROGRAMS IN GALLATIN COUNTY

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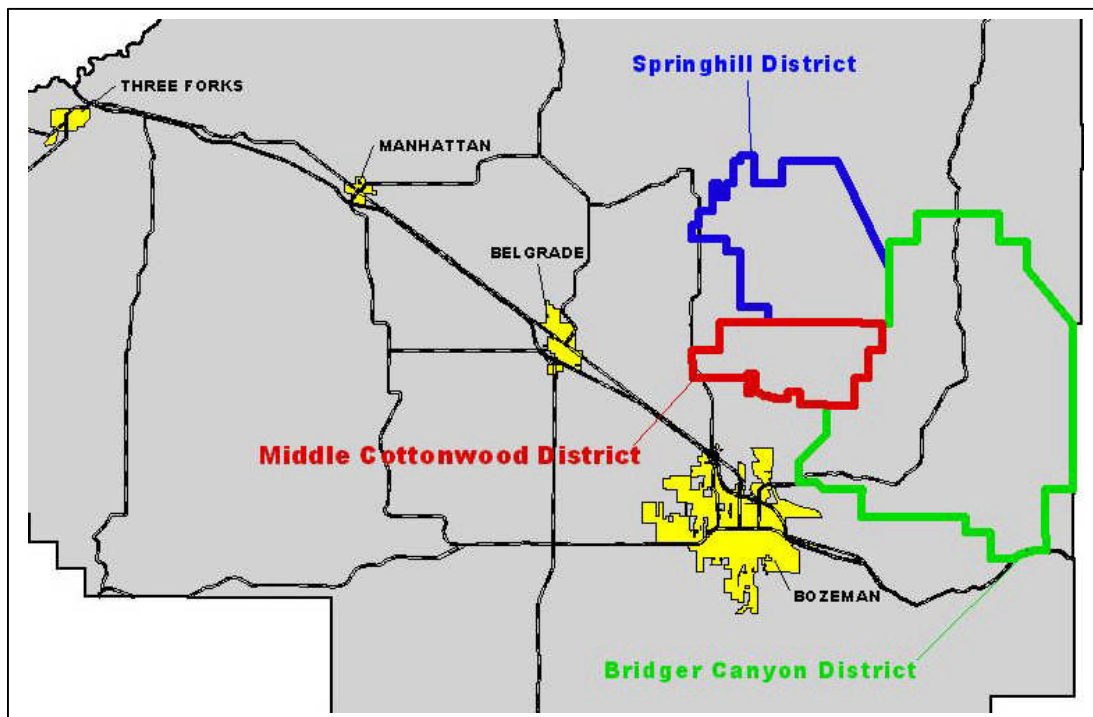
In Gallatin County, zoning districts and their associated TDR programs are currently handled individually. Four County zoning districts offer TDR programs. Each addresses its own focus of conservation.

**MIDDLE COTTONWOOD ZONING DISTRICT:** The TDR program in this district aims to protect mule deer winter range, and has one of the most successful examples of TDR use in Saddle Peak Ranch, discussed below.

**SPRINGHILL ZONING DISTRICT:** The Springhill district offers a TDR program to protect prime agricultural lands, the historical use of the area.

**BRIDGER CANYON ZONING DISTRICT:** This district offers TDRs to direct development to appropriate areas and to preserve open space.

**SOUTH GALLATIN ZONING DISTRICT:** This district's TDRs offer landowners options for the use of their property.



With each zoning district offering its own customized type and allotment of TDRs, the versatility of the TDR mechanism serves each individual district's intent. More and varied TDR programs in the County, or a county-wide program, can identify specific lands and uses to preserve and protect, and those lands upon which development is welcomed as appropriate and low-impact to the natural environment.

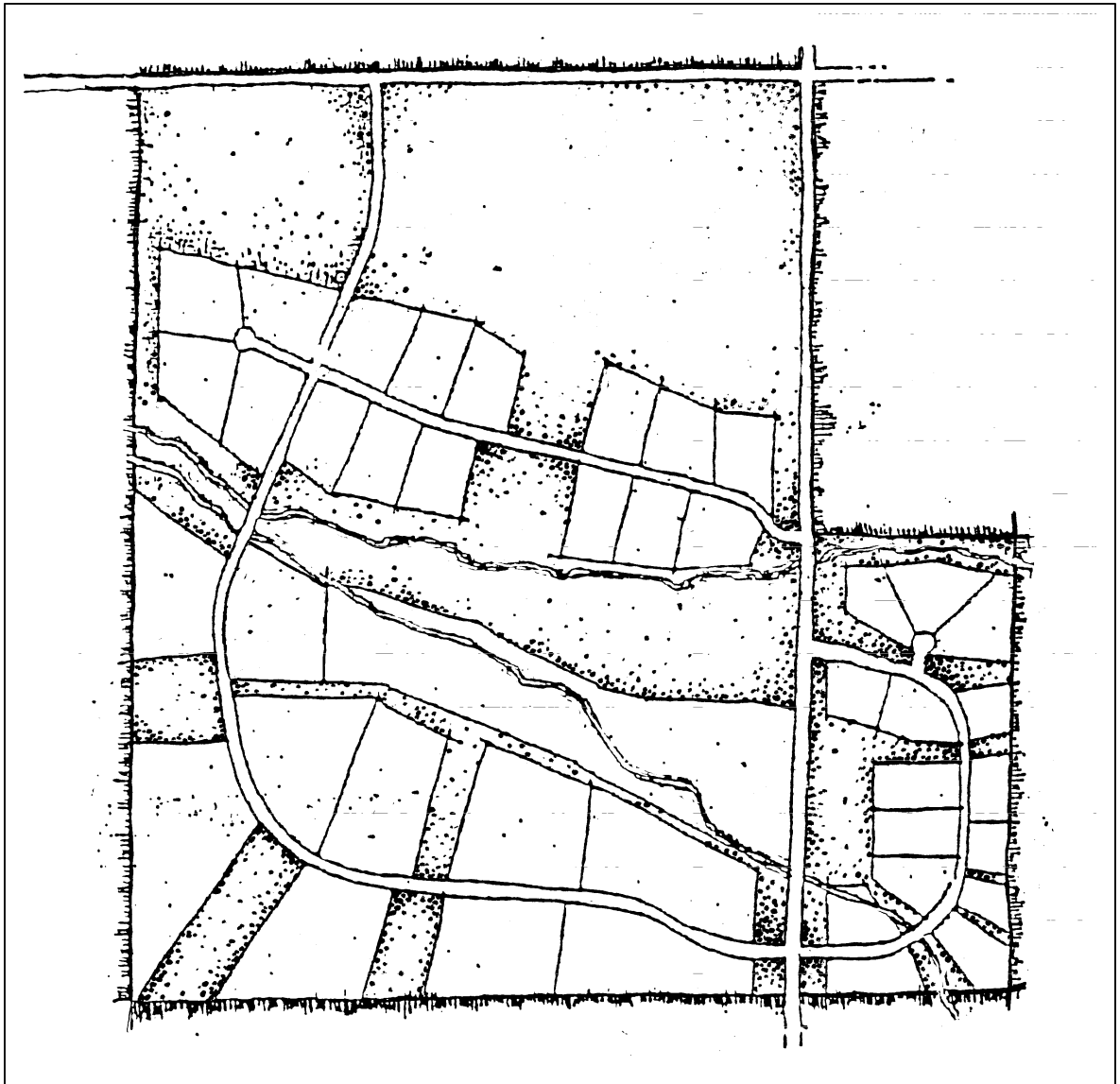
Few conservation mechanisms can be customized to accommodate both the preservation and growth goals of an individual district or area. In Gallatin County, with its variety of wildlife habitats, watercourses, wetlands, riparian areas, and prime agricultural lands, and with its record urban growth, TDR programs in individual districts—or countywide, as discussed later—can be tailored to spotlight specific lands to be protected, and to be developed.



### LIVING PROOF OF TDR SUCCESS: SADDLE PEAK RANCH

The Saddle Peak Ranch project in Gallatin County's Middle Cottonwood Zoning District is an excellent example of a successful TDR program. Conceived by local developer Bill Muhlenfeld, Saddle Peak Ranch includes 41 residential lots on 520 acres, 15 lots above and beyond that allowed by the standard underlying one-per-20-acre zoning. Muhlenfeld was able to increase the number of lots through the purchase of 11 development rights in the neighboring mule deer wintering range established under the zoning district. By purchasing development rights in this protected area, Muhlenfeld was able to increase the overall density in the Saddle Peak development and at the same time receive density bonus rights.

Muhlenfeld won by offering more lots for sale. The community won with the protection of permanent open space along the Bridger Mountains, an area considered prime habitat for mule deer. The landowner who sold the development rights won by acquiring income for development rights he preferred not to exercise. Additionally, over 260 acres of open space was protected within the project for continued agricultural and recreational use.



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## THE AGRICULTURAL COMMUNITY

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The TDR Committee included three Gallatin Valley ranchers to weigh the merits of TDR programs and examine the benefit or detriment such programs might have on agricultural lands and the ranching way of life. Several key questions arose: how would lands be valued for the purpose of calculating TDRs? Can development and conserved lands be directed or placed appropriately? Is selling off development rights and placing lands into easements permanent? In short, is a TDR program worthwhile and will it work?

Although the ranching contingent of the Committee has some reservations about calculating the finer details of a TDR program, they are supportive of the idea of TDRs. Indeed, some live in zoning districts where a TDR program is already offered (Springhill). And many Committee members agreed that TDRs could influence what should be a logical progression of development and conservation, so that neither “leapfrogs” into places where it constricts the other. For instance, a parcel that’s along a major transportation corridor and likely to be surrounded by development may not be the best site to preserve, just as contiguous parcels of precious lands should not, perhaps, be subdivided.

Agricultural producers agreed that the common determining factor is money. One Committee member stated that typically, valuations of TDRs are way too low compared to the real value of the property for development purposes (but not, interestingly, for agricultural purposes). Another Committee member expressed his reluctance to sell off any TDRs because of the permanent restriction of the land from that point on, forever (through conservation easements).

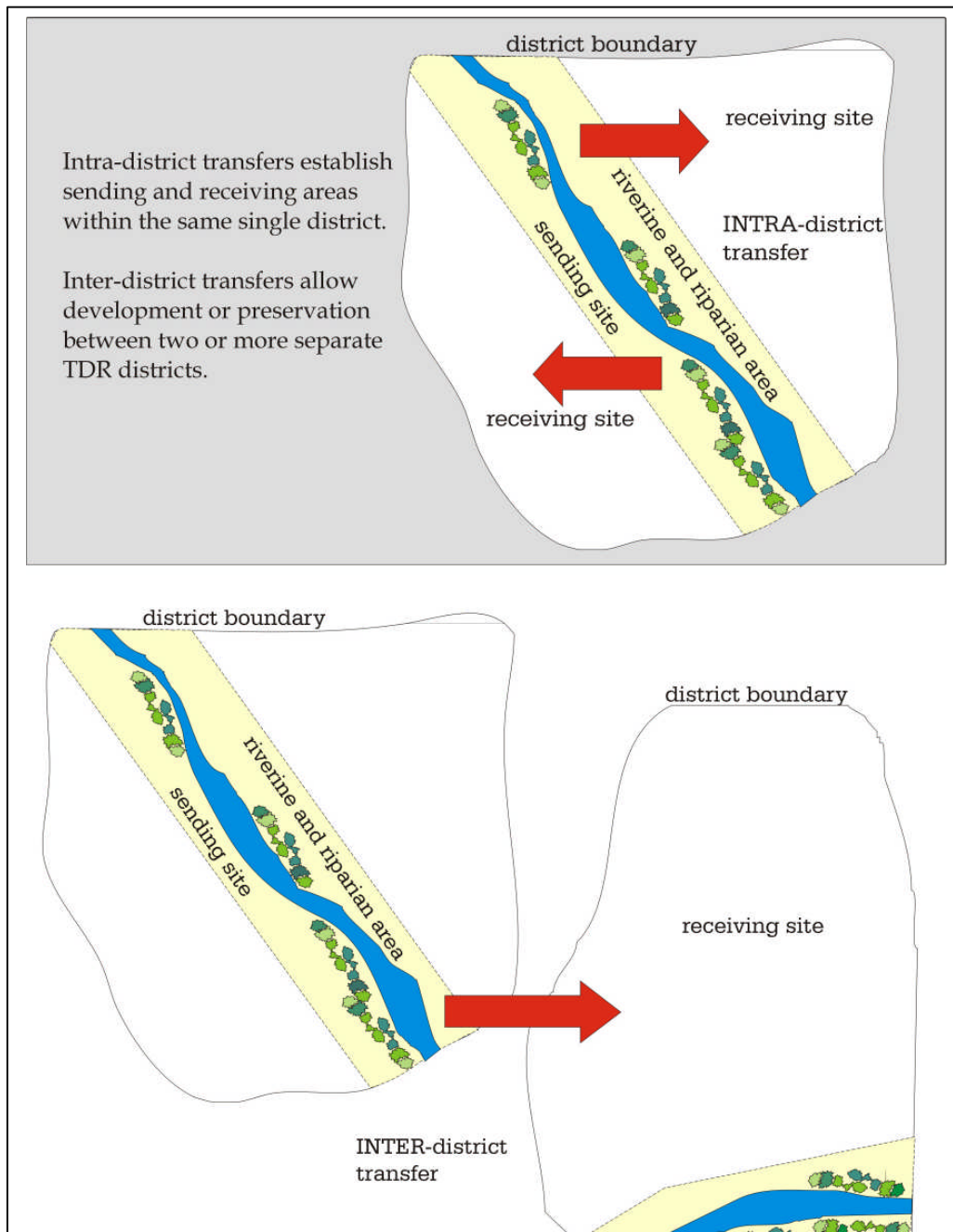
The factors that won wide support among the group for TDRs were that

- 1) TDRs are private transactions and use no public tax dollars
- 2) Market-based valuations are fairer, more timely, and more real than government-controlled pricing mechanisms
- 3) Qualifiers for sending areas (lands to be preserved) as well as receiving areas (lands to be developed) could help to keep a logical layout of land use
- 4) Districts could establish sending and receiving areas within single districts, establishing predictability

Inter- and intra-district transfers can both utilize TDR programs. An intra-district transfer establishes sending and receiving areas within the same single district; inter-district transfers allow development or preservation between two or more separate TDR districts. With independent zoning districts in the County, the agricultural producers on the Committee supported intra-district transfers, and only in zoned districts. Some agreed that TDRs work best in smaller areas, where the types of lands are known, uses are established, and predictability for selling and buying TDRs is measured (that is, the quantity of TDRs and their approximate value is known). The ag Committee members also agreed unanimously that for any development, developers should pay the cost of infrastructure and construction, and that those costs should not be absorbed into TDR valuation or public taxation. The support for intra-district transfers also hinged upon the direct and adjacent benefit of the lands and the predictability for people within a single zoning district to know what to expect.

In Committee discussions, the subject of a government-based land valuation arose. The concern of ag producers with governmentally established TDR or density transfer charges is that the County or state may use a land appraisal value to set the density charges, which could be valued inaccurately and at too low a value compared to the price at which one might sell the land for development.

Another detail of TDR programs to be determined is how to define the terms the program uses. For instance, “prime agricultural lands” could be defined as actively productive cropland and not scrubby grazing lands. Or, it could mean both. Land with good water sources might value higher than land without. Land not currently producing might rate low on the scale, but perhaps in time the land may be put into active production and value at a greater worth. An annual land inventory could show the amount of producing (and fallow) land, changing the dynamic of available TDRs and preservation areas, and therefore, the TDR market. With the pressures of development in the Gallatin Valley and the constantly receding undeveloped land inventory, the details of any TDR program will provide some of the biggest challenges and opportunities for program success.



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## DEVELOPERS

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TDRs take development rights from one place to use in another, placing or concentrating development in sites deemed appropriate. The development community, then, is an implementer of the development rights transferred from parcels to be preserved as open space, watercourse and wetlands, habitat, prime agricultural land. In order for a TDR program to work, developers must find TDRs worthwhile to purchase and use, along with viable receiving sites on which to place density.

### RECENT HISTORY IN THE REGION

Over the past decade, Gallatin County has experienced more growth than any other Montana community. From 1990 to 2000, Gallatin County's population increased 34%, causing a wild frenzy of development pressure from Big Sky to the Bridger Mountains. Such growth has spurred many a debate, in a variety of cases pressuring decision makers to make tough choices regarding the appropriateness of certain development. Over the past seven years, Gallatin County Commissioners have denied nearly a dozen projects proposed in the Gallatin Valley. Developers have spent thousands of dollars in upfront money trying to obtain approvals, and landowners have been caught in the middle of a fast-growth inspired chaos with residents clamoring for some sort of predictability.

At current growth rates, the county will host over 7,000 new homes by 2014.

At current County growth rates, the County will need approximately 60 homes per month or nearly 720 residences a year to meet projected rates of growth. Within 10 years, nearly 7,200 new homes will be needed to accommodate new residents, enough to double the populations of Manhattan and Belgrade put together.

Committee members from the development community expressed frustration about the city and County development approval processes. Although hesitant to embrace the thought of additional costs tied to development (through purchase of development rights), increased predictability and streamlined processes could make higher costs worth it. Developers by far have been the least enthusiastic about implementation of a TDR program, but their ears perk up when talk of incentives is added to the mix. The group recognized that zoning can offer predictability and that use of TDRs, if properly administered, could offer options within the development world that could help overcome obstacles of the past.

Development opportunities in Gallatin County have been less certain over the past 10 years. With adoption of the Gallatin County Plan in 1993 and Gallatin County Growth Policy in 2003, County Commissioners have evaluated subdivision proposals with broader County goals in mind -- denying a number of projects that, in their opinion, didn't measure up. The Commission has repeatedly encouraged the formation of new zoning districts focused on comprehensive land use planning as a means to increase project predictability. Development projects in zoning districts have had much greater success in obtaining preliminary plat approval over those proposed in unzoned portions of the County.

### DEVELOPERS' PERSPECTIVES

Two developers participated in the TDR Committee. Bill Muhlenfeld has successfully and profitably implemented TDRs in his Saddle Peak Ranch. Kevin Cook develops commercial and residential real estate in the valley and is cautious about TDRs. Both men, however, find greater benefit to TDRs in intra-district transfers, since the "cause and effect" remain for the benefit of those residents.

In intra-district transfers, sites designated as sending sites and development areas designated as receiving areas allow residents to directly benefit from the lands they've preserved. Intra-district transfers encourage a sense of stewardship of precious lands while encouraging growth in sites designated appropriate for development. In zoning districts where precious lands can be preserved and development occurs in clusters, residents can enjoy preserved watercourses, wildlife habitat, and wetlands in the type of wilderness-out-the-back-door that so many people desire.

But even with successful examples and more marketable home sites in TDR plans, developers are concerned that a TDR program would be difficult to administer, would add expense to development, and would complicate an already complicated and time-consuming planning process. The predictability of planning—that is, filing applications, getting favourable and workable results from planning boards and planners, acquiring plat approvals, and all the related development requirements—is taxed by any new proposal, such as TDRs. If developers could hedge a “good” thing, like participating in a TDR program by buying development rights to condense development in appropriate areas, and thereby shorten lengthy and detailed planning processes, more developers might participate.

Rapid growth rates in the County do little to encourage developers to take on another level of bureaucracy in their planning processes, and so something to simplify the processes is a great enticement. Increased predictability is an advantage that could merit TDR participation; so is zoning. Developers say that zoning helps, as long as regulations are clear and unambiguous. Muhlenfeld contends that with zoning, “you know what you can do.” But even with zoning codes that delineate density, lot sizes, and the like, complicated regulations and costly standards have muddled the issue. Ultimately, any additional cost must pay for itself. Cook says that the burden is passed to the landowners. “Development is getting more and more expensive. Rising costs are simply passed on to the end users.”

Both Cook and Muhlenfeld believe TDRs have merit but vary in their respective confidence. Cook worries that TDRs could further complicate the system. Instead of finding, shopping around, and buying TDRs, he favors one set fee over a variable fee, saying the County may want to consider an impact fee for open space over use of TDRs. Muhlenfeld, meanwhile, believes “a good developer is a good steward of the land.” He says developers should pay their own way and supports use of TDRs in helping obtain larger County goals for steering development to appropriate areas. “We want Gallatin County to look nice 20 years from now,” he says.

Both developers support the use of TDRs through a user-friendly, simplified system. Roadblocks, whether regulatory or administrative, make a developer's job tougher and the likelihood of participation in a TDR program lower.

Another consideration is that, zone changes for increased density within the City of Bozeman and in the County are currently offered without the need to purchase additional density rights. Unlike a potential TDR program, zone changes allow developers and landowners to increase density essentially for free (with exception of application costs). Such zone changes are not always granted however. Developers contend that they would appreciate some sort of predictability in the process and may be willing to trade paying for density if increased predictability is added to approvals.

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## LAND USE AND ZONING CONSIDERATIONS

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In Committee discussions, TDR program details, County policies, and conservation initiatives combined to create a variety of questions about land use. In creating a hypothetical inventory of precious lands (sending sites) and development-appropriate areas (receiving sites), the Committee assigned TDR credits to watercourses, wetlands, and wildlife habitat, and assigned lands adjacent to city limits and along roads and other existing infrastructure as appropriate for development. The Committee believes that logical land use patterns for *both* conservation and development areas are important to identify.

For some, assigning development rights to parcels which could not support development—like rivers or wetlands—seemed either a bonus for preserving those precious lands, or unfair because the character of the site was such that development there would be impossible. Largely, the Committee supported assigning bonus or multiple credits to sites such as these, recognizing the value of the sites. Another consideration was that private landowners would benefit from TDR value but may not provide public access to those preserved lands. The Committee expressed its support to provide TDR value to keep precious lands preserved. In riverine and riparian areas, preserving the habitats for species even on private lands contributes greatly to the long-term viability of those species, helping to sustain the region's wildlife populations and habitats.

Another benefit to land conservation through TDR is that low-elevation lands can be preserved. Public lands such as those in state and national forests protect higher elevation lands. A TDR program here in Gallatin Valley could help to preserve river and riparian areas, wildlife habitat and winter range, prime valley agricultural areas, and wetlands that would protect a growing scarcity. In short, a TDR program could be especially effective with our low-elevation precious lands that are under intense growth pressure.

### PREVENTING PATCHWORK

The dual goal of identifying lands for preservation and for development is key to the success of not only a TDR program but to a successful and liveable community. By identifying adjoining parcels to protect and to develop, programs direct efforts so that urban density grows near population centres and city infrastructure and open space is preserved in larger, contiguous, and functional parcels than those individual pieces that make it up. The goal in a TDR program is not only to provide a way for trading development from one place to another, but to plan accordingly so that the County is not a patchwork of unmanageable pockets of development or small impractical parcels of open space.

### COUNTY-WIDE ZONING

One of the overriding principles of a TDR program is that districts using TDRs must be zoned. Zoning sets density, land use, circulation, services, connectivity, and cohesion between uses. Zoning lends predictability for the use of a parcel and for the sites around it. To that end, TDRs which transfer development from one site to another need to be based in zoning. The benefit is that development using TDRs might, for instance, enjoy an accelerated or easier approval, or might gain some density (more homesites) for preserving open space elsewhere. The Committee discussed intra-district transfers, where TDR sending and receiving sites exist within the same district, and inter-district transfers, where TDR sites were in different zoning districts.

Committee members supported both methods, the intra-district transfers because of the predictability and direct benefit to residents of the district, and the inter-district transfers because density could be transferred to the city “donut” areas (the 1-3 mile area surrounding existing municipalities), adding urban density next to existing density and city services.

County-wide zoning could establish a land use classification map, identifying viable sending and receiving sites for TDRs.

Some Committee members believe that a County TDR program would be more effective if operated on a countywide scale, utilizing countywide zoning or another countywide regulatory program. A larger scale of zoning would allow identification and protection of natural features such as river and riparian corridors, and other features that are currently subject to piecemeal plans. It could zone all parcels of the County, so that orphan sites for development or preservation might be less likely to “patchwork” the County. There is concern that a TDR program that promotes fragmented open space may end up benefiting private landowners and overlooking larger public interests, but there is general agreement from the Committee that the public, both present and future, needs to benefit from a TDR program.

County-wide zoning would establish viable sending and, more importantly, receiving areas, and could help to project development into places where municipal services are most easily and efficiently provided, where connectivity along roads and transmission lines is most effective, where urban density serves people best and has the least impact on the natural environment, and where logical growth patterns expand into appropriate sites and preserve valuable lands.

#### TEMPORARY TDRS

The Committee discussed the use of temporary or term TDRs, similar to a temporary or term conservation easement. Typically, land preservation mechanisms like conservation easements are permanent; similarly, TDRs are bought and sold once, and the development right transfer is noted on the land deed as a matter of record. Discussion among Committee members posed the possibility of temporary TDRs which might sunset in 40 or 50 years. Some felt this idea had merit, since land use in fifty or a hundred years may be very different, and subject to re-appraisal of use. Other Committee members strongly oppose temporary TDRs, since TDRs are intended for resource protection, affecting wildlife population and success, water quality, open space initiatives, and natural resources.

Another consideration would be the manipulation of market forces, gaining a benefit from selling a temporary TDR and perhaps reaping another benefit later, when land may have become even more precious. One Committee member called this the “betrayal factor”, noting that the benefit to single property owners far outweighed the public quality of life and predictability of land use. The general consensus was that the short-term benefit should not be greater than the long-term benefit of land use, whether in conservation or development. The Committee ultimately determined that TDRs should be permanent mechanisms, and since they are voluntary and market-driven, any participant would know the effect, short- and long-term, of TDR sale and purchase.

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## CITY PERSPECTIVE

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TDR programs promote density in appropriate sites near municipal infrastructure for the effective and efficient delivery of services. Gallatin County's cities and towns, and their immediate surrounding areas, are identified as good sites to be receiving sites.

Bozeman city planners promote density within the city, and the city annexes parcels of land to build to a parcel's density potential, provide city services, and expand the city service area. The County land surrounding the city limits of a municipality is called the "donut"; because cities are the logical sites in which to place urban density, the TDR Committee agreed that city donut areas are prime receiving areas. Placing density in the donuts serves three goals: expanding city density and services, serving as receiving sites for development, and preserving viable open space elsewhere.

Parts of the donut areas also include sensitive areas to be preserved, such as watercourses and wetlands, and the TDR Committee recognized that identifying the donut as a receiving site did not preclude classifying appropriate areas as sending sites. Just because the halo drawn around a city is designated a receiving area does not mean that precious natural features within that border will be sacrificed for density. Those areas that met qualifying criteria for preservation elsewhere would be preserved within the donut area, too.

Bozeman's land use goals reflect the TDR Committee and County's goals: to encourage infill development, to annex and expand city density and services, and to preserve open space. In addition to Bozeman's density goals, Bozeman city commissioners last year passed the first neighborhood plan which put forward preservation goals. The Bozeman Creek Neighborhood Plan (the "Plan") identified precious natural features within the urban landscape and proposed preserving those features by limiting development (or requiring higher standards for it, or sending it elsewhere) and by preserving and enhancing the natural creek corridor features. The city commission adopted the Plan in 2004, and part of the Plan is to use mechanisms to preserve the site, including TDRs. In this way, a city can identify its own sending sites, although it would usually serve as a receiving site for development density.

With encouragement to use TDRs to increase density, developers might hope to increase density above city zoning to place more units per site, but city zoning laws trump TDRs; TDRs cannot be used to circumvent zoning or to "upzone" to a greater density than a zoning allows. What city density can provide a builder with TDRs is diversity: perhaps reciprocity agreements between Bozeman and other Gallatin County cities (Manhattan, Belgrade, West Yellowstone) could offer more than only Bozeman or Bozeman donut building sites. Perhaps like-zoned parcels would appeal to builders to place density in the city for infill development and in the donut at greater-than-County density. Perhaps TDRs could be granted to builders providing low-income housing, offering a benefit much like that of a tax-increment district. There is a myriad of ways in which TDRs and city land use goals can complement one another; these are offered as just a few ideas.

Another consideration of identifying receiving areas next to cities is the difficulty in making individual subdivisions within the County viable. Gallatin County has denied at least 19 stand-alone subdivisions within the County in just the past six years; other subdivisions approved and built in the County have water or sewer systems that have failed, compounding the problem of stand-alone density and individual municipal systems.



The map of denied subdivisions in Gallatin County shows the number and placement of proposed subdivisions. The County land use pattern, had those subdivisions been approved, would have made future preservation and density concentration efforts far more difficult.

There is enthusiasm among the members of the TDR Committee that city donuts serve as ideal receiving areas because the County density (sometimes one homesite per twenty acres (1:20) or as great as one per one hundred sixty acres (1:160)) could be built to a higher density adjacent to the city, where infrastructure (such as roads, water and sewer, and disposal services) and urban benefits (such as shopping, schools, health care, etc.) are more easily and efficiently delivered. City participation in encouraging density and infill development serves the TDR model well; if that same standard can be applied to city donuts, the logical growth and preservation pattern of city and County should serve everyone—city dweller and County resident—well.

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## SUMMARY

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A TDR program facilitates the conservation of precious lands and responsible development in appropriate sites by transferring development rights between parcels.

A TDR program provides for preservation of critical lands without involvement of public funding.

A TDR program establishes qualifications for lands, and identifies viable sending sites (sites to be preserved) from which development rights are sent, and receiving sites (sites to host development) into which development rights are received.

A TDR program offers benefits to landowners selling TDRs by compensating them for development rights established on their lands, and rewards developers for buying TDRs with density bonuses and other benefits, like procedural shortcuts.

The TDR Committee found that even with its varied membership and differing perspectives on land use, conservation, development, and valuation, it supports TDR programs as methods by which land can be both preserved and developed responsibly. The overriding sense of the Committee was that any mechanism that can keep Gallatin Valley such a lovely place to live has the Committee's support.

In discussions about formulating the specifics of TDR programs, Committee members diverged in their opinions about the "fine print" of a policy. The Committee may be united in their curiosity and enthusiasm regarding TDRs and their hope that such a program might work under appropriate circumstances, but the Committee is not united in their feelings about program details. The agricultural sub-committee is justifiably concerned with the impact of any regulation on their property, its use, and future decisions about keeping the land in agricultural production when faced with the enormous financial pressures of keeping ag production alive with increasing land values for development. The development sub-committee is concerned with the additional costs of development and requirements a TDR policy may introduce. The greatest optimism rests with the conservation community, whose Committee members believe an appropriately implemented TDR program could greatly benefit the County.

Most Committee members generally support adding another tool to the County's land use toolbox. It is difficult to disagree with a voluntary, incentive-based, free-market land use tool. Some believe that the State of Montana should encourage TDR programs through appropriate statutory language and that the County could assume responsibility in managing a program, including participating in TDR banking, where landowners could sell their development rights to a third-party broker, and developers could buy from that source, alleviating the search-and-find aspect of development right holders and buyers. Some believe a TDR program could complement the County's Open Space Land Program by providing an endless supply of opportunities for preserving land. With proper adjustment to state law, the Open Space Funds could be a permanent endowment through use as a TDR bank where TDRs are bought and sold. All in all, the support for the basic intent of a TDR program is sound. The details of individual or County-based TDR programs will be determined by County residents and those willing to participate in this free-market, land conservation and development tool.

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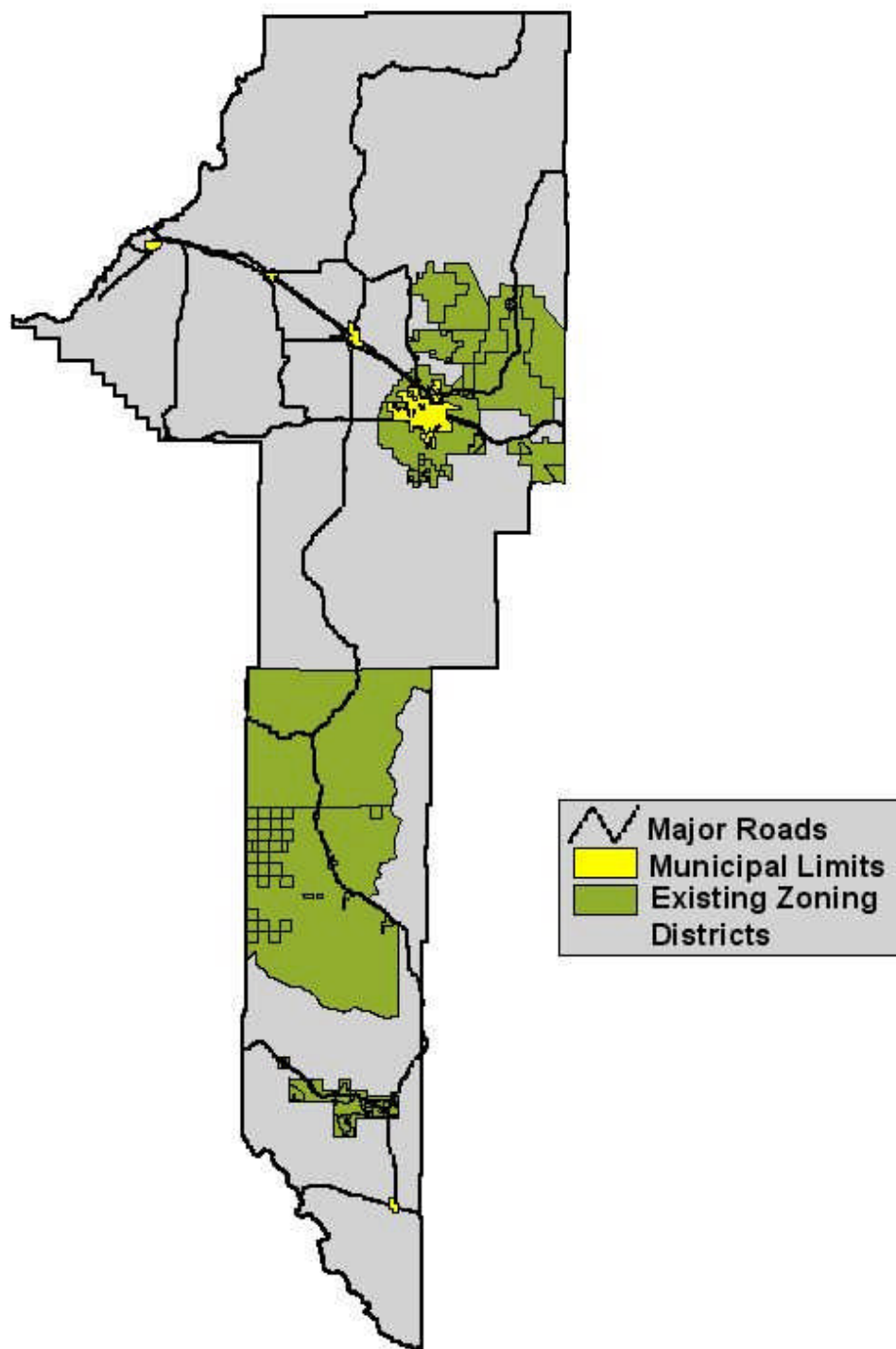
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p. 2. Louisiana Purchase, Frank Bond, "*Louisiana " and the Louisiana Purchase*. Washington, Government Printing Office, 1912. Map No. 4.

p. 7. Talleyrand, anonymous, lithograph.

p. 12. Robert Livingston, Corbis Images IH014479.



# Gallatin County Zoning Districts

